



## **SURFACE TRANSPORTATION BOARD**

**[Docket No. EP 772]**

### **Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Surface Transportation Board (Board) will hold an in-person public hearing on December 13 and 14, 2022, with Union Pacific Railroad Company (UP), pertaining to the significant increase in its use of embargoes. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, D.C. 20423-0001. The Board will direct the following executive-level officials of UP to appear in person: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. UP may bring additional personnel to the hearing who may be able to provide helpful information to the Board. In addition, the Board invites testimony from shippers and other stakeholders who can contribute to the Board's understanding of the cause and/or impact of the embargoes.

**DATES:** The hearing will be held on December 13 and 14, 2022, beginning at 9:30 a.m. ET, in the Hearing Room of the Board's headquarters and will be open for public observation. Interested stakeholders who wish to provide testimony at the hearing about the topics described in this notice should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) as soon as possible but no later than December 5, 2022. UP may bring other persons in addition to the executive-level officials directed to appear, and they may also provide testimony. If UP intends for any additional persons to appear, it should notify the Board

by December 5, 2022. Furthermore, by December 6, 2022, UP is directed to file certain information and documents, detailed below, pertaining to its embargoes and how UP is using and plans to use the Customer Inventory Management System (CIMS) as a tool to reset inventory levels in the short-term and for continual maintenance in the long-term. Interested stakeholders may file written testimony or comment about the topics described in this Notice by December 14, 2022.

**ADDRESSES:** All filings should be submitted via e-filing on the Board's website at [www.stb.gov](http://www.stb.gov). Filings will be posted to the Board's website and need not be served on any other party to the proceeding.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel Bawcombe at (202) 245-0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** Rail network reliability is essential to the Nation's economy and is a foremost priority of the Board. As discussed in prior decisions in Docket No. EP 770 and Docket No. EP 770 (Sub-No. 1), the Board has heard from a broad range of stakeholders about the significant challenges they have experienced because of inconsistent and unreliable rail service from BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and UP, including substantial increases in problems arising from tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance. The Board has received reports, from the Secretary of Transportation, the Secretary of Agriculture,

members of the U.S. Congress, and other stakeholders, about the serious impact of these service trends on rail users, particularly shippers of agricultural and energy products.<sup>1</sup>

As a Class I rail carrier, UP occupies a major and essential role in the movement of goods across the country. It carries approximately 26.8% of freight served by rail<sup>2</sup> and approximately 10.7% of all long-distance freight volume.<sup>3</sup> Therefore, disruptions in UP's service levels have a significant detrimental impact on the supply chain and the economy of the United States. As such, the Board has been closely monitoring UP's recent use of

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<sup>1</sup> See Letter from Hon. Jim Costa, Ralph Norman, Mary E. Miller, Charles J. Fleischmann, James R. Baird, Kat Cammack, W. Gregory Steube, Glenn Grothman, John Rose, Austin Scott, Trent Kelly, Rick W. Allen, Dan Newhouse, Mark E. Green, M.D., Louie Gohmert, Frank D. Lucas, Tracey Mann, Vicky Hartzler, Mike Thompson, Jimmy Panetta, Clay Higgins, David Rouzer, Byron Donalds, Tim Burchett, Darin LaHood, Josh Harder, Salud Carbajal, Cynthia Axne, Kim Schrier, M.D., David G. Valadao, Randy Feenstra, Julia Letlow, Sanford D. Bishop, Jr., Lisa C. McClain, Mariannette Miller-Meeks, M.D., Robert E. Latta, Daniel Meuser, Bob Gibbs, Cathy McMorris Rodgers, Jefferson Van Drew, Ashley Hinson, Daniel T. Kildee, Sharice L. Davids, Ro Khanna, John R. Moolenaar, David Kustoff, Al Lawson, Tom O'Halleran, Andrew S. Clyde, Michael Cloud, & Angie Craig, June 29, 2022, [Urgent Issues in Freight Rail Serv.](#), EP 770; Letter from Hon. Jim Costa, June 21, 2022, [Urgent Issues in Freight Rail Serv.](#), EP 770; Letter from Hon. Alex Padilla & Dianne Feinstein to Chairman Martin J. Oberman, June 1, 2022, [Urgent Issues in Freight Rail Serv.](#), EP 770; Letter from Hon. Kevin Cramer, Tammy Baldwin, Chuck Grassley, Shelley Moore Capito, Sherrod Brown, M. Michael Rounds, Patty Murray, Joni Ernst, Marco Rubio, Tammy Duckworth, Mike Crapo, James Risch, Tina Smith, Mark Kelly, John Hoeven, John Kennedy, Joe Manchin III, Roger Marshall M.D., Amy Klobuchar, Mike Braun, & Richard J. Durbin to Chairman Martin J. Oberman, May 24, 2022, [Urgent Issues in Freight Rail Serv.](#), EP 770; Letter from SMART-Transp. Div. to Chairman Martin J. Oberman (Apr. 1, 2022), available at [www.stb.gov](http://www.stb.gov) (open tab "News & Communications" & select "Non-Docketed Public Correspondence"); Letter from Hon. Thomas J. Vilsack, U.S. Dep't of Agric., Mar. 30, 2022, [Reciprocal Switching](#), EP 711 (Sub-No. 1); Letter from Hon. Shelley Moore Capito to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 29, 2022), available at [www.stb.gov](http://www.stb.gov) (open tab "News & Communications" & select "Non-Docketed Public Correspondence"); Letter from the Nat'l Grain & Feed Ass'n to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 24, 2022), available at [www.stb.gov](http://www.stb.gov) (open tab "News & Communications" & select "Non-Docketed Public Correspondence").

<sup>2</sup> This figure is derived from the Class I railroads' Annual Report of Operations and Finances, known as R-1 reports, submitted to the Board.

<sup>3</sup> This figure is derived from the Association of American Railroads (AAR) at [www.aar.org/facts-figures](http://www.aar.org/facts-figures).

embargoes<sup>4</sup> and has observed a disturbing upward trend in their usage. In recent years, there has been a significant increase in UP's use of embargoes, and congestion is the stated cause for almost of all of the embargoes, as shown in the below chart.<sup>5</sup>

<b>Year</b>	<b>Number of Embargoes</b>	<b>Percentage Caused by Congestion</b>	<b>Percentage Caused by Weather</b>	<b>Percentage Caused by Catastrophic Event</b>	<b>Percentage Caused by Other</b>
2017	27	19	70	11	22
2018	140	99		1	
2019	413	74	21		5
2020	251	85		9	6
2021	662	94	6		
2022	886 (as of October 2022)	98			2

This pattern shows no signs of abating. Between November 1, 2022, and November 17, 2022, UP issued an additional 126 embargoes with congestion as the stated cause. Of those 126 embargoes, 89 were issued on November 16, 2022; as of November 17, 2022, UP had 128 active embargoes in place and, for all, congestion was the stated cause. The Board understands that embargoes may vary in scope and that all carriers do not report and use embargoes in the same way. Nevertheless, the use of

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<sup>4</sup> According to AAR Circular No. TD-1, an embargo is “a method of controlling Traffic movements when, in the judgment of the serving railroad, an actual or threatened Physical or Operational Impairment, of a temporary nature, warrants restrictions against such movements.”

<sup>5</sup> This information was obtained from the AAR Embargo System at <https://embargo.railinc.com/#/home>.

embargoes by all other Class I carriers, combined, pales in comparison to the number of embargoes issued by UP. Given UP's sizeable role in freight rail, its increased use of embargoes in recent years, and the considerable increase just this month, it is imperative that the Board hear from UP directly about this matter and how UP plans to reduce, if not eliminate, the use of embargoes to control congestion.

The Board will hold a public hearing on December 13 and 14, 2022, beginning at 9:30 a.m. ET, at its offices in Washington, D.C., to hear firsthand from senior officials of UP about the substantial increase in the use of embargoes in recent years. The Board will direct the following executive-level officials of UP to appear at the hearing: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. UP is directed to ensure that its representatives can provide the Board with detailed information pertaining to UP's embargoes. Accordingly, in addition to those directed, UP may bring additional personnel to the hearing that may be able to provide helpful information to the Board. If UP intends to have any other persons appear, UP should notify the Board by December 5, 2022.

At the hearing, UP should be prepared to discuss in detail the following topics:

- UP's decision-making process in determining to issue an embargo, including underlying causes (e.g., network issues and crew shortages), whether UP's market power plays a role in the decision making, and UP's consideration of alternatives to embargoes;
- How UP measures congestion and total excess cars throughout its system;
- The explanations for the dramatic increase in embargoes since 2017, including whether UP has maintained sufficient resources during that time period;

- UP's practices and policies with respect to notification and outreach to shippers;
- UP's consideration of shippers' operational needs, including alternative avenues to meet their shipping requirements;
- UP's implementation and use of the CIMS;
- Whether UP has considered the impact of its embargoes on its common carrier and other legal obligations, and if so, the specifics of that consideration; and
- UP's plans, if any, to decrease the need for embargoes going forward.

Additionally, in advance of the hearing, UP is directed to file with the Board information and documents in support of the above topics so that the Board may understand UP's processes for deciding when and how to use embargoes. Furthermore, UP is directed to file with the Board information and documents so that the Board may understand how UP is using and intends to use the CIMS as a tool to reset inventory levels in the short-term and for continual maintenance in the long-term.

UP is also directed to preserve all paper and electronic records, including all correspondence, related to its embargoes and the CIMS.

In addition to directing UP's participation at the hearing, the Board will invite shippers and other stakeholders who can contribute to the Board's understanding of the cause and/or impact of UP's embargoes and the CIMS to testify.<sup>6</sup>

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at [www.stb.gov](http://www.stb.gov). The Board

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<sup>6</sup> The Board's public hearing is not intended to replace the informal and confidential dispute resolution process facilitated by the Board's Rail Customer and Public Assistance, and stakeholders are encouraged to continue communicating through that office.

will issue a separate notice containing the schedule of appearances. A transcript of the hearing will be posted on the Board's website once it is available.

It is ordered:

1. A public hearing will be held on December 13 and 14, 2022, beginning at 9:30 a.m. ET, in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, D.C. 20423-0001.

2. The following executive-level officials of UP are directed to appear at the public hearing: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. By December 5, 2022, UP must notify the Board if it intends to bring additional persons to appear.

3. By December 5, 2022, interested stakeholders who wish to provide testimony at the hearing about the topics described in this Notice shall file with the Board a notice of intent to participate identifying the party, the proposed speaker(s), and the time requested. Interested stakeholders may file written testimony or comment about the topics described in this Notice by December 14, 2022.

4. By December 6, 2022, UP is directed to file information with the Board, as discussed above.

5. UP is directed to preserve all records, including all correspondence, pertaining to its embargoes and the CIMS.

6. Filings will be posted to the Board's website and need not be served on any other party to the proceeding.

7. This decision is effective on its service date.

8. This decision will be published in the *Federal Register*.

**Decided:** November 22, 2022.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.

**Eden Besera,**

*Clearance Clerk.*

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